

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO.1813 OF 2006

Dated:01.02.2006

BETWEEN

B.Narayan Reddy, s/o B.Muthi Reddy

....PETITIONER

AND

A.P.Housing Board, rep. by its Managing Director & Chairman, Gruhakalpa,
Nampally, Hyderabad and another.

....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO.1813 OF 2006

ORDER:

The petitioner was allotted MIGH Quarter No.2 of Housing Board Colony, Chevella, Ranga Reddy District vide letter, dated 19.09.1988, issued by the Regional Housing Engineer on a tentative cost of Rs.51,900/-. The petitioner was required to make a down payment of 30% and the balance amount in quarterly instalments, spread over for a period of 12 years. The petitioner allegedly paid the quarterly instalments regularly. Be that as it is, on 24.01.2000, the second respondent issued a notice to the petitioner informing the final cost of the building/quarter and the difference amount required to be paid. He was advised to pay a sum of Rs.58,915/- within a period of thirty days from the said notice, dated 24.01.2000, and he was also informed that interest will be levied on delayed payments. The petitioner sent a reply through his Lawyer informing that he paid a sum of Rs.65,075/- and requested to prepare full cost of the quarter and payments made by him, and informing the balance amount to be paid. Pursuant thereto, the second respondent issued a memo, dated 20.05.2004, calling upon the petitioner to pay a sum of Rs.61,239/- together with penal interest within a period of fifteen days and he was also informed that allotment will be cancelled, if there is any default. Thereafter, the petitioner made payment of Rs.40,000/- by way of a bank draft on 17.10.2005 and a sum of Rs.21,300/- was paid on 19.11.2005. Again the petitioner was asked to pay a sum of Rs.1,36,435/- plus charges on or before 01.01.2006. The petitioner did not pay the amount and got issued a legal notice, dated 02.01.2006. In reply thereto, the second respondent issued a communication, dated 07.01.2006, to the petitioner's Lawyer informing that an amount of Rs.1,36,435/- is the balance to be paid by the petitioner which includes penal interest, after giving penal interest rebate as per APHB Rules. In this writ petition, the petitioner assails the letter of the second respondent, dated 20.12.2005, whereby and whereunder, the petitioner was asked to pay a sum of Rs.1,36,435/- towards the balance amount, including penal interest.

The learned counsel for the petitioner strenuously contends that the petitioner has paid the entire amount of Rs.61,239/- on 17.10.2005 and 19.11.2005 and hence, he is not liable to pay any more amount. Therefore, the impugned order is unsustainable being arbitrary. The learned counsel submits that though it is a

contractual transaction, the first respondent, being public authority, even in the matters of contracts, cannot act arbitrarily.

The learned Standing Counsel for APHB, Mr.D.Ranganatha Kumar, appears and opposes the writ petition. He places reliance on the decision of the Supreme Court in **Bareilly Development Authority v Ajay Pal Singh** and two unreported judgments of this Court in **K.V.S.Rao v The Vice Chairman and Commissioner, APHB** (W.P.No.18094 of 1999, dated 30.01.2003) and **Md.Abdul Razack v The Vice Chairman and Housing Commissioner, APHB** (W.P.No.20200 of 2002, dated 11.08.2005), and contends that a writ petition is not maintainable in a matter of this nature. He further submits that the calculation made by the respondents is correct and that the petitioner did not pay any instalments during the years 1991, 1992, 1995, 1997 and 1999 and therefore, he is liable to pay penal interest as per the letter of allotment and agreement.

In **Bareilly Development Authority v Ajay Pal Singh** (supra), the Supreme Court ruled that “ if the contract entered into by the State is non-statutory and purely contractual, the relations are no longer governed by the constitutional provisions, but by the legally valid contract which determines the rights and obligations of the parties *inter se* and therefore, no writ or order can be issued under Article 226 of the Constitution of India, so as to compel the authorities to remedy a breach of contract pure and simple.” In the two judgments of this Court referred to hereinabove, this Court followed the judgment of the Supreme Court in **Bareilly Development Authority v Ajay Pal Singh** and dismissed the writ petitions as not maintainable. Therefore, the petitioner, if so advised, has to avail remedies elsewhere.

The petitioner’s counsel lastly requests to give permission to the petitioner to approach the second respondent with all the original challans for the purpose of verification of the payments made by the petitioner. There cannot be any objection for the same. The petitioner is given liberty to approach the second respondent for this purpose, and as and when the petitioner approaches the second respondent, the second respondent shall verify the same. Insofar as this writ petition, no relief can be granted.

The writ petition, with the above observations, is accordingly dismissed. No costs.

(V.V.S.RAO,J)

01.02.2006

VGB